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Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by European Centre for Law and Justice, The / Centre Europeen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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1814383

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Requesting that the U.N. Assist in the Immediate Release and Return to the United States of American Citizen Pastor Andrew Brunson from Wrongful Detention in Turkey

1. Introduction

One of the principle aims of the United Nations (U.N.), as expressed in the preamble of the 1945 United Nations Charter, is 'to reaffirm faith in fundamental human rights [and] in the dignity and worth of the human person'[1]. It is for this reason that the United Nations Human Rights Council (UNHRC) holds member states accountable for those significant violations of human dignity that run contrary to this aim.

The European Centre for Law and Justice (ECLJ), on behalf of Pastor Andrew Brunson, and nearly 600,000 people from 202 countries and territories who have signed a petition requesting his release, once again respectfully draws this Council's attention to the plight of Pastor Andrew Brunson, an American citizen, who has been unjustly and arbitrarily detained and imprisoned in Turkey for nearly two years.

Pastor Brunson's ongoing trial in Turkey began on 16 April 2018. Turkey has made it clear that this is a sham trial, and, as indicated by President Erdoğan's multiple demands to swap Pastor Brunson for Fethullah Gülen, Pastor Brunson is undoubtedly a political prisoner being held as a bargaining chip for Turkey. Furthermore, Turkey has instituted a working group, and recently dispatched a delegation to the United States to try and resolve the wrongful detention of Pastor Brunson, clearly indicating that he is indeed a political hostage.

As a founding Member State of the U.N., Turkey is obligated to adhere to norms set forth in the U.N. Charter, such as those requiring members '[t]o achieve international cooperation in promoting and encouraging respect for human rights and . . . fundamental freedoms without distinction as to [inter alia] religion'[2]. Pastor Brunson's detention appears to be related to his work as a Christian minister, and the indictment states his alleged crime as "Christianization." By detaining and imprisoning Pastor Brunson because of his religious expression, peaceful association, and assembly of religious believers, Turkey is violating not only its obligations under the U.N. Charter, but its own Constitution, as well as Pastor Brunson's fundamental rights: freedom of religion and belief, freedom of expression, freedoms of peaceful assembly and association. Therefore, these violations concern not only Turkey, but every Member State and every agency of the U.N.

2. Background

For 23 years, Pastor Brunson had worked openly on behalf of the people of Izmir, Turkey, serving as the pastor of the Izmir Resurrection Church, part of a small Protestant Christian community. Then, on 7 October 2016, Pastor Brunson arrived home to find a written summons to report with his passport to a local police station. Believing the summons was related to his routine application for a renewal of his residence visa, Pastor Brunson promptly reported to the Izmir police, only to be arrested and later told that he was to be deported, as he was considered a 'national security risk'. Pastor Brunson was never deported, he was instead transferred to the Harmandali Detention Centre and held for 63 days. During this time, he was denied access to an attorney and repeated requests by U.S. officials to visit Pastor Brunson were ignored, raising serious concerns.

On 9 December 2016, he was transferred to a prison facility as a suspect of alleged 'membership in an armed terrorist organization', despite no evidence having been presented to justify the accusations against him. Turkey repeatedly denied Pastor Brunson's appeals for release, and no indictment was handed down until March 2018. The indictment against Pastor Brunson was 62 pages long, wholly lacking in merit, and provided no evidence regarding criminal action against him, only including hearsay from secret witnesses.

16 April 2018 was the first day of Pastor Brunson's trial. It lasted thirteen hours and was filled with video testimony of secret prosecution witnesses whose appearances and voices were disguised almost to the point of their testimony being indecipherable. At the conclusion, the 3-judge panel of Turkish judges refused to release Pastor Brunson and ordered that he be returned to prison.

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[1] U.N. Charter, Preamble.

[2] U.N. Charter art. 1, para. 3. *See also* Articles 55 and 56 of the U.N. Charter.

7 May 2018 was Pastor Brunson's second day of trial. It lasted eleven hours, and again involved only prosecution witness testimony. Two of the seven witnesses brought by the prosecution were secret, and all seven of the witnesses testified that they had not personally seen or heard Pastor Brunson do anything that would substantiate the charges against him. Their testimony was completely hearsay and conjecture. Pastor Brunson's Turkish attorney objected to the testimony of one of the witness against Pastor Brunson by pointing out that the witness had been convicted on 14 separate counts of fraud; however, the lead judge claimed that fact was not relevant and stated that all the prosecution witnesses' statements would be taken as fact.

18 July 2018 was Pastor Brunson's third day of trial, again involving secret prosecution witness testimony. The day concluded mid-afternoon after the court heard two prosecution witnesses and only allowed one defence witness to testify and whose testimony was essentially disregarded. Pastor Brunson was yet again remanded back to prison, and the judges yet again have delayed Pastor Brunson's trial by setting the next date for nearly *three months* later on 12 October 2018. Shortly after his third trial date, Pastor Brunson was abruptly moved from Turkish prison to house arrest in Turkey, where he is confined to his apartment and banned from leaving the country.

These actions violate Articles 9 (right to liberty and security of person), 14 (equality before the courts and tribunals), and 18 (right to freedom of thought, conscience and religion), of the International Covenant on Civil and Political Rights (ICCPR) to which Turkey is a signatory, as well as Articles 7 (equality before the law and equal protection of the law), 9 (no arbitrary arrest or detention), 10 (fair and public hearing), and 11 (presumed innocent until proved guilty) of the Universal Declaration of Human Rights (UDHR), and Article 5 (right to liberty and security of person & lawfulness of detention), and 6 (adequate time and facilities for the preparation of his defence) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Additionally, Articles 10 and 24 of the Constitution of the Republic of Turkey protect the rights of everyone to equality before the law 'without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect'[3], as do Articles 2 and 7 of the UDHR and Article 18 of the ICCPR. These rights include the freedom, 'either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching'[4]. Article 5 of the ECHR guarantees that no one shall be arbitrarily 'deprived of his liberty'.[5] Article 36 of the Constitution also protects the right to litigation 'before the courts through lawful means and procedure.' Turkey has violated all of these protections by arresting and detaining an innocent pastor in prison for over a year and a half based on the hearsay testimony of secret witnesses. Moreover, Turkey has denied Pastor Brunson the opportunity to mount an adequate defence by flippantly dismissing the majority of the defence witness testimony.

3. Request

One of the hallmarks of Turkey's proud history is the respect for all faiths and the rule of law. Thus, Turkey should respectfully be reminded of its continuing obligations under its constitution as well as the ICCPR, UDHR, and ECHR to respect and value the freedom of religion and rule of law. The ECLJ urges this Council to call upon Turkey to honour its obligations. The ECLJ is aware that the U.N. Working Group on Arbitrary Detention has begun an investigation of Pastor Brunson's case, has received a response from Turkey, and an answer from Pastor Brunson, as well as a supplemental response and answer. The ECLJ is grateful for the Working Group's attention to this matter, and further requests that the U.N. continue to make every effort to ensure that Pastor Brunson is not only treated with great care, but that he is quickly released back to the United States without injury or delay.

4. Conclusion

The U.N. has long stood to protect the human rights of all people. In intervening on behalf of Pastor Brunson, the U.N. will once again demonstrate its commitment to ensuring that freedom of religion exists for all people, regardless of their faith.

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[3] CONSTITUTION OF THE REPUBLIC OF TURKEY July 23, 1995, art. 10, and 'freedom of conscience, religious belief and conviction,' id. at art. 24, as do Articles 2 and 7 of the UDHR and Article 18 of the ICCPR.

[4] ICCPR, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), art. 18, U.N. Doc. A/6316 (*entered into force* Mar. 23, 1976).

[5] ECHR, art. 6 (Nov. 4, 1950), 213 U.N.T.S. 221.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), International-Lawyers.Org, Union of Arab Jurists, United Towns Agency for North-South Cooperation, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Aid Workers, Children in Armed Conflict, and Statelessness in South Sudan – Current Issues for a Positive Future**

The civil war in South Sudan that began in December 2013 has claimed the lives of about 10,000 people and has displaced millions of others. The violent and armed conflict has largely been due to the dispute between Sudan People's Liberation Army (SPLA) led by current President, Salva Kiir, and Sudan People's Liberation Army in Opposition (SPLA-IO) led by First-Vice President, Riek Machar. Armed violence, horrendous human rights abuses, and grave violations have devastated the youngest country in the world.

In late August 2015, a peace deal was signed by President Kiir that included the establishment of a hybrid court that never came to fruition and the peace deal itself was also not adhered to as armed violence continued and spread across the country. In August 2018, a new peace deal was signed by the warring parties with hopes that both sides will respect and comply with the agreements set forth.

In light of these developments there are nonetheless urgent and serious issues that need to be dealt with in South Sudan. This statement addresses some of these concerns, namely, violent attacks against aid workers in South Sudan, the situation of children in armed conflict, and statelessness. These grave matters, among others, must be actively addressed especially for the sake of victims and people of South Sudan as they continue to struggle for peace and justice.

Aid workers in South Sudan

For the third straight year South Sudan tops the global list of violence against humanitarian operations making it the most dangerous country for aid workers. The "Aid Worker Security Report, 2018" recorded major attacks against aid workers where South Sudan accounted for almost one third of the 158 major violent incidents against aid workers. The major attacks in 2017 included killings by gunfire and aid worker kidnappings, to which they noted a sharp rise in 2016 in South Sudan as a result of the escalated violent conflict between the Sudan People's Liberation Army (SPLA) and the Sudan People's Liberation Army in-Opposition (SPLA-IO). In the past kidnappings were not as high and this rise suggests that this worrying trend is due to tactics by the armed groups to "assert control over aid operations".[1]

In 2017 reports also recorded increases in the detention of aid workers, which was attributed to the warring parties, as well as physical assaults and armed robberies.[2] As noted by Jan Egeland, the Secretary General of the Norwegian Refugee Council (NRC), this trend further complicates aid operations in South Sudan where thousands of innocent civilians are in desperate and urgent need of humanitarian aid. Since the conflict broke out, to date over one hundred aid workers have lost their lives where South Sudanese staff are the highest at risk. Moreover, the hardest to reach locations for aid are usually the most dangerous and at times relief organisations have had to pull out of such areas for security purposes – this is especially concerning as it means the most vulnerable are put in further peril as critical aid such as food and medicine are brought to a halt or suspended. Hundreds of thousands of victims to the devastating conflict urgently need such aid as many communities are on the brink of starvation and not only are they dependent on food and medicine due to their livelihoods destroyed by the warring parties but also because such aid would help restore their ways of living and reverse the famine they suffered in 2017 and 2018.[3]

Aid workers are protected under customary International Humanitarian Law (IHL), Article 71(2) of the Additional Protocols to the Geneva Conventions of 12 August 1949, under "Personnel participating in relief actions" states, "Such personnel shall be respected and protected"[4]. Furthermore, "intentionally directing attacks against personnel… involved in a humanitarian assistance" is considered a war crime under the Statute of the International Criminal Court Article 8(2)(b)(iii) in addition to grave breaches of the Geneva Conventions of 12 August 1949.[5]

Children in armed conflict

The release of over 900 child soldiers including girls this year 2018 alone from the ranks of Armed Groups in South Sudan and with additional releases expected in the coming months is a positive sign towards protecting the children and future of South Sudan.[6] Since the beginning of the civil war in 2015 over 19,000 children were recruited and used by both warring parties and other government security forces and armed groups further endangering them and exposing

[1] "Aid Worker Security Report: Figures at a Glance – 2018". Humanitarian Outcomes. www.aidworkersecurity.org
[2] https://reliefweb.int/report/south-sudan/south-sudan-declared-most-violent-aid-workers-third-straight-year
[3] https://reliefweb.int/report/south-sudan/south-sudan-declared-most-violent-aid-workers-third-straight-year
[4] Additional Protocol I, Article 71(2) (adopted by consensus) (cited in Vol. II, Ch. 8, § 3).
[5] ICC Statute, Article 8(2)(b)(iii)(*ibid*, § 142).
[6] https://childrenandarmedconflict.un.org/south-sudan-128-children-released-from-the-ranks-of-armed-groups/

them to high risks of being killed and maimed in the conflict between SPLA and SPLA-IO. Numerous incidents have been documented and reported of horrible violent attacks that killed and maimed hundreds of children and cases of sexual violence against girls are also on record.

The released children are undergoing a reintegration process that will eventually see them going back to their homes and schools. Vocational training will also be provided with the aim of improving household income and food security.[7] In addition to these positive steps forward and providing educational and other opportunities to children the government, social services, and especially communities must ensure that they also have the opportunity to undergo the necessary mental and physical therapy in order to heal from traumatic experiences and episodes for both boys and girls.

Human Rights education for children in novel and creative ways must be integrated into schools and other places of learning in order to ensure that children from an early age are aware and have the knowledge about their human rights. Education is always a crucial and absolutely necessary step towards preventing human rights violations such as recruitment and enrolment of child soldiers in armed conflicts – notwithstanding the role and responsibility of the government and other relevant services to promote and most importantly to protect people's human rights.

Statelessness in South Sudan

Right after South Sudan's independence a decision was taken by the Republic of Sudan to revoke nationality of individuals qualified for South Sudanese nationality leaving many at risk of statelessness. Administrative challenges and poverty have created problems thus increasing populations' risk of statelessness – these impediments must be immediately addressed. [8] Unfortunately, South Sudan is currently not party to the 1954 Convention Relating to the Status of Stateless Persons nor the 1961 Convention on the Reduction of Statelessness, additionally, the 2011 Nationality Act does not address statelessness and there is no statelessness determination procedure in South Sudan.

The repercussions of statelessness in South Sudan can truly affect a person's life as their status will lead to the loss of access to basic rights and services such as education. Furthermore, they suffer political, economic, and social deprivations and pay higher taxes. These disadvantages together with the denial of basic rights and services indirectly leads to arrests and evictions among other hardships.[9]

South Sudan Peace Deal

While any peaceful steps towards ending the conflict and moving towards peace is welcomed there is much concern that the final Peace Deal signed on August 5, 2018 in Khartoum with the third round of talks taking place on 13 August, regarding power-sharing and security arrangements, may be difficult to maintain especially considering the weight of the transitional government consists of five vice-presidents, 35 cabinet ministers, and a transitional national legislative body comprised of 550 legislators.

Furthermore, those who are part of the problem are in power and as long as they maintain their status it is uncertain and unlikely that justice will be guaranteed. In light of this, the international community must be involved in the Peace Talks and especially with regards to the establishment and functioning of the hybrid court – as a former judge and the first woman and current appointed judge in Protection of Civilians Camp (POC3) Rebecca Nyadir noted, "*It will help us in the healing of the country*".[10]

Conclusion

The Peace Deal of August 2018 is certainly a welcomed step towards peace but must be critically acclaimed and scrutinized for its success. With this regard the Peace Deal must also have the people of South Sudan in its best interest and must address the very serious issue of statelessness, children in armed conflict, and aid workers in South Sudan.

Recommendations

Human Rights Council

- *Urge* the international community and all relevant UN bodies to reinforce and enhance security measures towards humanitarian aid operations in South Sudan, especially the most vulnerable and remote areas.

7 https://childrenandarmedconflict.un.org/south-sudan-128-children-released-from-the-ranks-of-armed-groups/
8 https://reliefweb.int/report/south-sudan/study-statelessness-south-sudan-2017
9 http://www.refworld.org/docid/5b1112d54.html
10 https://www.aljazeera.com/indepth/features/south-sudan-internally-displaced-create-system-justice-180718153818625.html

Government of South Sudan

- *Ensure* that aid personnel in the country are respected and protected with respect to International Humanitarian Law, the Geneva Conventions and its Additional Protocols and Statute of the International Criminal Court; and further increase and improve security routes and measures towards such personnel.
- *Sign and ratify* the 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.
- *Release* all remaining child soldiers from Army Ranks and *prioritize* special health and education concerns of those released.

International Community

- *Ensure* security measures towards humanitarian workers is included in the Peace Deal as well as accountability for perpetrators who attack aid workers and justice for the victims.
- *Guarantee* that the Peace Deal includes remedy for the victims of grave human rights violations, serious abuses, and war crimes.

**Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), Association of Humanitarian Lawyers (AHL), NGOs without consultative status, also share the views expressed in this statement.